

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED
FEB 29 2008
U.S. DISTRICT COURT
ELKINS WV 26241

TOMMY MITCHELL WHITE,

Petitioner,

vs.

**Civil Action No. 2:05 CV 7
(Maxwell)**

WILLIAM S. HAINES, Warden,

Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on January 31, 2005, when *pro se* Petitioner Tommy Mitchell White, an inmate at Huttonsville Correctional Center in Huttonsville, West Virginia, filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation, pursuant to Rule 83.13 of the Local Rules of Prisoner Litigation Procedure.

By Order entered February 22, 2005, Magistrate Judge Kaull noted that it appeared that the Petitioner's § 2254 Petition was untimely and warned him that said Petition would be recommended for dismissal unless he could demonstrate that said Petition was timely filed. On March 21, 2005, the Petitioner responded to Magistrate Judge Kaull's February 22, 2005, Order. In his response, the Petitioner requested that the Court not dismiss his Petition as untimely in light of the fact that his state appointed attorney had not advised him of the time limit for filing a § 2254 Petition, and in light of the fact that he has only an eight grade education and does not know how the Court system works.

On August 22, 2005, United States Magistrate Judge John S. Kaull filed a Report And Recommendation/Opinion in the above-styled civil action, wherein he recommended that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied and dismissed with prejudice because said Petition was untimely.

Magistrate Judge Kaull's Report And Recommendation/Opinion expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Report And Recommendation/Opinion within ten days after being served with a copy of the same.

The record herein reflects that on August 29, 2005, the Petitioner filed a document styled Objections To Denial Of § 2254 Petition. In this document, the Petitioner appeals to the District Court's conscience to allow what he admits was an untimely §2254 Petition to proceed. In support of this appeal, the Petitioner once again relies on his ignorance of procedural law and his lack of education.

Upon examination of Magistrate Judge Kaull's Report And Recommendation/Opinion, it appears to the Court that the issues of whether the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody is timely and whether there is any basis for an equitable tolling of the AEDPA's statute of limitations were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Petitioner's objections to said Report And Recommendation/Opinion, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Report And Recommendation/Opinion. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report And Recommendation/Opinion accurately

reflects the law applicable to the facts and circumstances before the Court in the above-styled civil action. Therefore, it is

ORDERED that the Report And Recommendation/Opinion entered by United States Magistrate Judge John S. Kaull on August 22, 2005 (Docket No. 5), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED, with prejudice**, as untimely.

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

ENTER: February 29, 2008


United States District Judge